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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

BERNARD L. MADOFF, Main Case No.

Debtor. 09-11893-brl

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SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff,

- against - Adv. Case No.

08-01789-brl

BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

Defendant.

- - - - -x

IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF B,

Plaintiff,

- against - Adv. Case No.

10-05328-brl

MORGAN, INDIVIDUALLY, AND AS GUARDIAN OF A.V.M., et al.,

Defendant.

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U.S. Bankruptcy Court
One Bowling Green
New York, New York

June 1, 2011
10:03 AM

B E F O R E:
HON. BURTON R. LIFLAND
U.S. BANKRUPTCY JUDGE

1

2 FIFTH Application of Windels Marx Lane & Mittendorf, LLP for
3 Allowance of Interim Compensation for Services Rendered and
4 Reimbursement of Actual and Necessary Expenses Incurred (ADV
5 08-01789-br1) (cc-4023) (Adj. from 5/12/11)

6

7 APPLICATION of Werder Vigano as Special Counsel to the Trustee
8 for Allowance of Interim Compensation for Services Rendered and
9 Reimbursement of Actual and Necessary Expenses (4031) (Adj.
10 from 5/12/11)

11

12 APPLICATION of Schifferli Vafadar Sivilotti as Special Counsel
13 to the Trustee for Allowance of Interim Compensation for
14 Services Rendered (4034) (Adj. from 5/12/11)

15

16 APPLICATION of Attias & Levy as Special Counsel to the Trustee
17 for Allowance of Interim Compensation for Services Rendered and
18 Reimbursement of Actual and Necessary Expenses (4024) (Adj.
19 from 5/12/11)

20

21 APPLICATION of Eugene F. Collins as Special Counsel to the
22 Trustee for Allowance of Interim Compensation for Services
23 Rendered and Reimbursement of Actual and Necessary Expenses
24 (4025) (Adj. from 5/12/11)

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APPLICATION of Taylor Wessing as Special Counsel to the Trustee
for Allowance of Interim Compensation for Services Rendered and
Reimbursement of Actual and Necessary Expenses (4026) (Adj.
from 5/12/11)

APPLICATION of Williams Barristers & Attorneys as Special
Counsel to the Trustee for Allowance of Interim Compensation
for Services Rendered and Reimbursement of Actual and Necessary
Expenses (4027) (Adj. from 5/12/11)

FEE Application of SCA Creque as Special Counsel (4032) (Adj.
from 5/12/11)

SIXTH Application of the Trustee and Baker & Hostetler LLP for
Allowance of Interim Compensation for Services Rendered and
Reimbursement of Actual and Necessary Expenses (4022) (Adj.
from 5/12/11)

APPLICATION of Young Conaway Stargatt & Taylor LLP as Special
Counsel to the Trustee for Allowance of Interim Compensation
for Services Rendered and Reimbursement of Actual and Necessary
Expenses (4033) (Adj. from 5/12/11)

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APPLICATION of Schiltz & Schiltz as Special Counsel to the
Trustee for Allowance of Interim Compensation for Services
Rendered and Reimbursement of Actual and Necessary Expenses
(4028) (Adj. from 5/12/11)

APPLICATION of Higgs & Johnson (formerly Higgs Johnson Truman
Bodden & Co.) as Special Counsel to the Trustee for Allowance
of Interim Compensation for Services Rendered and Reimbursement
of Actual and Necessary Expenses (4029) (Adj. from 5/12/11)

APPLICATION of Kugler Kandestin, LLP as Special Counsel to the
Trustee for Allowance of Interim Compensation for Services
Rendered and Reimbursement of Actual and Necessary Expenses
(4030) (Adj. from 5/12/11)

MOTION of the Trustee for Entry of Litigation Protective Order
(cc-3819) (Adj. from 3/16/11, Adj. from 3/31/11, Adj. from
4/28/11, Adj. from 5/24/11)

MOTION for an Order Pursuant to Federal Rule 25(a) (1)
Substituting Defendant and Continuing Action (ADV 10-05328-br1)
(Adj. from 5/25/11)

Transcribed by: Sara Davis

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Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
Bernard L. Madoff
45 Rockefeller Plaza
New York, NY 10111

BY: JUDY A. SELBY, ESQ.

DAVID J. SHEEHAN, ESQ.

SEANNA BROWN, ESQ.

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P R O C E E D I N G S

THE COURT: Be seated, please.

THE CLERK: SIPC v. BLMIS.

MR. SHEEHAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. SHEEHAN: We have, obviously, a number of matters on here this morning and I would li -- I'm very happy to report to Your Honor that we've been working in anticipation of Your Honor arriving on the bench and I think we've worked out everything with the LPL so we neednot argue any of that this morning. But, I've said to my colleagues --

THE COURT: Shall I leave, then? Is that all?

MR. SHEEHAN: We're all done?

THE COURT: Okay.

MR. SHEEHAN: I said to my colleagues who were gracious enough to work this out with us that we should, of course, take advantage to putting it on the record so that their trip to court is somewhat worthwhile. And we can then capture that in a revised order which we'll submit to Your Honor.

The first one is an objection that was filed by Mr. Wiles. His was in connection with paragraph 4(e); Your Honor may remember that. What he has suggested is some additional language which I'm going to ask him to step to the podium and read to us, because I don't remember exactly what we agreed to,

1 but he has it. And then we can just incorporate that into the
2 order.

3 Mr. Wiles, if I could?

4 MR. WILES: Thank you. Good morning, Your Honor.

5 THE COURT: We're dealing now with the litigation
6 protective order?

7 MR. WILES: Beg your pardon? Yes, yes. This is the
8 litigation protective order.

9 THE COURT: Go ahead.

10 MR. WILES: The -- what we've agreed to do is to add
11 to paragraph 4 the following two sentences. "The items listed
12 in this paragraph shall not be treated as confidential material
13 under the authority granted by this order. However nothing in
14 this paragraph is intended as a ruling on the extent to which
15 any party may claim that any particular information is
16 confidential to object to the production of such information or
17 to seek an additional protective order with respect to specific
18 information."

19 And we've agreed to add that and that resolves my
20 objection. Thank you.

21 THE COURT: I have no problem, although I wonder
22 reading all the versions and the objection, the right to come
23 back and raise the issue is clearly in the order that was going
24 to be submitted to the Court. So I really feel it's a little
25 bit of much ado about nothing, but it did take up a good deal

1 of my time.

2 MR. SHEEHAN: Sorry about that, Your Honor. We tried
3 to work it all out in advance.

4 We have one other objection. It's from the Dechert
5 firm representing Mr. Merkin and, again, I asked counsel if he
6 wants to step forward and state for the records what we'd agree
7 to and then we can incorporate it in the order.

8 MR. STEINER: Thank you, Your Honor. Neil Steiner
9 from Dechert. With respect to paragraph 9 of the order which
10 provides that if the trustee received a document request for
11 interrogatory such as the ones we've served as defendants in an
12 adversary proceeding, that would require the production of
13 information that's been produced to them by other parties,
14 pursuant to Rule 2004 or in other adversary proceedings,
15 they'll give notice as drafted if the producing party in such
16 other action doesn't consent, it's within the discretion of the
17 trustee to raise the issue with the Court or not. To resolve
18 that, we've agreed that paragraph 9 in the middle of page 5
19 that starts, "If the producing party objects to the
20 redesignation, the receiving party" and then we would insert
21 the words 'or any party in interest in an individual adversary
22 proceeding' and then it continues "may, consistent with the
23 local Bankruptcy Rules, request a conference to raise the issue
24 with the Court."

25 There are two other provisions in 10(f) and 12. 10(f)

1 relates to the use of documents in depositions if they haven't
2 been produced because of a confidentiality designation. and
3 then 12 relates to the trustee's obligation to notify producing
4 parties who've designated things as confidential where, I think
5 we've agreed that we would work out some language either for
6 the order or specifically with respect to our adversary -- our
7 individual adversary proceeding. We've left the agreement with
8 Ms. Selby is that we'd try to work that out in the next day or
9 so and to the extent necessary, submit it for your approval.

10 THE COURT: Does anyone want to be heard?

11 The requests are granted.

12 MR. SHEEHAN: Thank you, Your Honor.

13 Your Honor, the balance of the calendar this morning
14 deals with fee applications by the trustee and his counsel,
15 foreign counsel and confluence counsel. None of them are
16 objected to, except that of the trustee and Baker, Hostetler
17 counsel to trustee. What I would propose we do is, if I could,
18 Your Honor, just in summary fashion go through the unopposed
19 just to put them on the record and give a brief statement as to
20 what they involved. And then submit that all to Your Honor and
21 hear if anyone wants to object here in the courtroom. If
22 that's okay with you?

23 THE COURT: Go ahead.

24 MR. SHEEHAN: Your Honor, first of all, we have --
25 I'll do the foreign counsel. As Your Honor knows, we've

1 instituted over 1,000 lawsuits and we're in thirty different
2 jurisdictions, which requires us -- the trustee to go out and
3 find other counsel to assist us in these endeavors.

4 I'll start off with Bermuda. That's the Williams
5 Barristers firm in Bermuda. There is a substantial sum of
6 money, around 100 million dollars, which we have managed to,
7 with the agreement of the liquidators in Kingate to hang on to
8 that money pending resolution among the parties of their
9 various claims to those funds. Needless to say, in that
10 endeavor, we need the assistance of local counsel.

11 We sought the approval which this Court gave to
12 Williams' retention. They have worked very closely with us
13 through this entire effort. We have a number of significant
14 matters occurring in Kingate on a fairly routine basis, so
15 their application is before Your Honor and is unopposed.

16 The next is the British Virgin Islands. That's the
17 SCA Creque firm. Mr. Olympitis is our counsel there. As Your
18 Honor also knows, Kingate, Fairfield Sentry and a number of
19 other feeder funds were incorporated in BVI. As a result, we
20 appear there regularly to protect the causes of action
21 instituted by the trustee there as parallel protective actions
22 as well as actions here in this court. And we work, again,
23 very closely with them in putting together bills of
24 particulars, extensions and numerous other activities to
25 protect the interests of the estate.

1 Next is Canada. There it's principally work performed
2 by the Kugler Kandestin firm in connection with service of
3 process issues, Your Honor. And that's why their bill is only
4 2,500 hours and change.

5 The next firm that is -- it's in the Cayman Islands,
6 this is Higgs & Johnson. Cayman Islands, again, is a place of
7 incorporation for many of the feeder funds. Needless to say,
8 we also appear there in several actions that we've instituted,
9 most prominently the Hawley action where we have filed a
10 protective action in addition to the action that was filed here
11 in this court. They assist us in that matter on a daily basis.

12 The next one is the one that is probably the most
13 prominent and that's Taylor Wessing. Taylor Wessing is the
14 firm in London that assists us across the board, throughout the
15 islands, which are subject to commonwealth law, as well as in
16 the course of London in connection with actions that we have
17 instituted there. There are several actions.

18 One is the action against the directors of MSIL, the
19 London branch, if you will, of the fraudulent scheme. And
20 then, in addition to that, we have an action filed against
21 Sonja Kohn as a protective action in light of the obvious
22 jurisdictional and extraterritoriality issues that we'll
23 encounter there. I must say, that's almost a daily experience
24 working with counsel there and they have contributed greatly to
25 the success we've achieved to date.

1 THE COURT: Isn't there a protocol enforced with
2 respect to the London --

3 MR. SHEEHAN: Yes, there is, Your Honor. We've
4 entered into a protocol with the joint liquidator, Mr. Akres,
5 and have worked closely with him in prosecuting all these
6 lawsuits.

7 Next is the Attias, Levy firm. This is the firm in
8 Gibraltar; Your Honor has great familiarity with this. This is
9 the Vizcaya Sous (ph.) Bank Safra matter. We found out very
10 early on there were seventy-five million dollars sitting in
11 Gibraltar. We're halfway home to that; that money is now here
12 in the United States. We brought, as Your Honor knows, default
13 actions for judgments against the parties there. After the
14 Rubin decision came out of the British courts allowing default
15 judgments in bankruptcy courts to be enforced in the British
16 courts, they decided to come here, as Your Honor knows, vacate
17 the default and they're now going to litigate those issues here
18 in the United States before Your Honor.

19 So I would have to say that the Attias, Levy firm has
20 done yeoman work in terms of supporting us in that effort,
21 although it's not finished yet. We're well advanced in where
22 we're heading with that litigation.

23 Next is Ireland, it's the Eugene F. Collins firm.
24 There are a number of feeder funds that operated through Irish
25 facilities that were provided there, most prominently being

1 Thema International. We are looking to recover at least 380
2 million dollars that passed through those funds in Ireland and
3 that firm has been assisting us in that effort as well.

4 Luxembourg. Schultz & Schultz (sic). This is a firm
5 that has been working with us, again, with regard to the
6 actions we've instituted against UBS and Luxalpha and there are
7 other Luxembourg-based feeder funds and they've assisted us in
8 getting documents, discovery and access to the local
9 authorities.

10 Then, lastly for foreign firms, we have the
11 Switzerland firm of Werder and Vigano. Werder and Vigano is
12 assisting us with regard to Sonja Kohn. As Your Honor may be
13 aware, Sonja Kohn claims citizenship in Switzerland and
14 Austria. She's not yet determined which she's going to advance
15 before the courts, but we need the assistance of Swiss counsel
16 to work with them and the local authorities in regard to those
17 issues.

18 Your Honor, all those applications are before Your
19 Honor. I am aware of no objections to them and I would
20 therefore move for their approval.

21 THE COURT: Does anyone want to be heard?

22 Your application is granted.

23 MR. SHEEHAN: Thank you, Your Honor.

24 There are, of course, two other firms that have
25 submitted applications here, Your Honor. One has been with the

1 case for a very substantial period of time. That's the firm of
2 Windels, Marx. As you know, Alan Nisselson was in this case as
3 the Chapter 7 trustee for Mr. Madoff. He continues in that
4 capacity pursuant to an order of Your Honor. We have, in
5 addition, utilized the Windels, Marx firm for conflicts counsel
6 on numerous matters involving the Madoff family, in particular,
7 and many of their investment vehicles.

8 I've worked closely with them. Howard Simon and Mr.
9 Nisselson are here in court today as partners representing that
10 firm. Their work has been outstanding, been very, very helpful
11 to the trustee and we've achieved some significant results by
12 virtue of their efforts.

13 The other firm that's here this morning is counsel to
14 the trustee in a conflicts capacity is Young, Conaway. This
15 case being as pervasive as it is, eventually Windels, Marx had
16 a conflict. And we needed to get the assistance of other
17 counsel so we reached out to Young, Conaway. Young, Conaway
18 has stepped up; they've worked very closely with us on a number
19 of matters that they instituted prior to the December 11th
20 date. And we find their work to have been exemplary as well.

21 I know of no objection to either one of these
22 applications and would move both of them for approval as well,
23 Your Honor.

24 THE COURT: I'm familiar with a lot of their
25 activities, visibly before the Court. Unless somebody wants to

1 be heard, I'm prepared to grant the application.

2 Apparently not.

3 MR. SHEEHAN: Thank you, Your Honor.

4 That leaves us with -- this morning with the
5 application of the trustee and I want to apologize for the
6 absence of the trustee who has sent me an e-mail that there's
7 some kind of problem on the E train -- or not E train, 6 train.
8 Trustee travels by subway and he's not here. So, he would like
9 to have addressed the Court and I may even interrupt what I'm
10 about to say to allow him -- or he can speak at the end of my
11 presentation, Your Honor.

12 The --

13 THE COURT: I think I can understand some of the
14 problems. I couldn't get home last night, either, by surface
15 transportation or subway.

16 MR. SHEEHAN: Well, the e-mail said there was an
17 unauthorized person on the tracks.

18 THE COURT: That's not to say that I slept here last
19 night.

20 MR. SHEEHAN: That's all right, Judge. I just know it
21 wasn't Mr. Picard.

22 Anyway, Your Honor, we have before us this morning on
23 objection to the sixth interim fee application of the trustee
24 and his counsel. And there are a number of issues that have
25 been raised before by Ms. Chaitman on behalf of her clients.

1 but I believe that, perhaps -- and I beg the Court's indulgence
2 to make something of -- more than just a perfunctory
3 presentation to Your Honor and not that we're normally
4 perfunctory, but I wanted to go beyond what, perhaps, would
5 normally be required here. Especially given the statute as
6 written.

7 The thrust of what Ms. Chaitman seems to be suggesting
8 is that this trustee has mismanaged the estate -- has actually
9 done a terrible job, shouldn't be paid virtually at all. And
10 last night, we were accused of violating the Constitution; we
11 are now un-Constitutional, as well. I don't speak of those
12 things lightly and I don't mean to be facetious when I say
13 them.

14 I do raise this, though. We are in this case for 902
15 days as of today. 902 days in which this trustee, based on the
16 7.6 million dollars subject to appeals by Ms. Chaitman, has
17 therefore garnered to the estate 8 million dollars a day. I
18 think we've done a good job. I think that in and of itself
19 speaks volumes. But how do you get there? How do you get to
20 eight million dollars a day? And lots more in the offing,
21 which this Court will be hearing about very, very shortly and
22 we'll add significantly to that total.

23 How you get there is to do all of the hard work. And
24 out application is just for four months ending in January. But
25 it goes back in a real sense; it encompasses all the work that

1 we -- transpired beforehand. You don't file over 1,000
2 lawsuits before the statute runs in December of 2010 without
3 intense efforts by a big team of people. That's just focusing
4 on the litigation. On top of that, as Ms. Chaitman points out,
5 we had 16,000 claims. But we should break that down.

6 16,000 claims, the vast majority of those being
7 indirects, as we call them, or customers without an account.
8 People invested in feeder funds. And the feeder funds
9 themselves. There's a pending motion before Your Honor on that
10 very subject matter.

11 We denied all of those but it's been misunderstood,
12 misapplied again; misleading information is supplied to people.
13 The press, gullible as it is, eats it up; doesn't understand
14 what's going on. Your Honor knows that when we approved a
15 feeder fund in this particular case for settlement, what will
16 happen. Their claim will be allowed as part of that
17 settlement. They will receive a distribution in cases that
18 will be significant; billions of dollars will be paid to those
19 feeder funds. And those feeder funds in turn, will pay those
20 thousands of investors.

21 Our job is made more difficult by that because what we
22 have to do is assure ourselves that when we make those payments
23 to those feeder funds, that the money goes to those investors.
24 And we've worked assiduously with every one of those feeder
25 fund counsel to ensure that that takes place. And it will in

1 connection with all those settlements.

2 To suggest they've been discarded, abandoned, not part
3 of this proceeding is hogwash and Ms. Chaitman knows it.
4 That's the sad part. She knows exactly what's going on. She's
5 an experienced bankruptcy practitioner. Think of that. She
6 and how many others are experienced bankruptcy practitioners.
7 Hundreds in this case. Hundreds. Some of the best law firms
8 in the city, in the country, in the world are in this case.
9 Not one of them has ever objected to these fees. Ms.
10 Chaitman's objected to every one, based on spurious information
11 and misinformation.

12 And following up on -- when we got into the case, Your
13 Honor knows we retained, and those efforts are also criticized
14 by Ms. Chaitman, forensic accountants at FTI, and now
15 AlixPartners, to assist as a two-pronged effort; FTI focusing
16 on the litigation which resulted in all those lawsuits,
17 AlixPartners on evaluating the flip side of that coin, the
18 customer claims. Now, we've finished almost all of them. The
19 only reason there's a significant difference between the amount
20 of claims approved and the amount of dollars involved is
21 because the bulk of the dollars are in the feeder funds.

22 Out of the 17.6 billion dollars of claims that were
23 filed, only 2 billion of those were outside the feeder funds.
24 The rest are all feeder fund dollars. That's what we're
25 talking about here. So the two billion dollars that's out

1 there that we could distribute, if in fact we had the ability
2 to do so, we could fully satisfy a lot of people very, very
3 quickly. There's only one thing holding that up and that's the
4 appeal in the Picard matter. That's the only thing holding it
5 up. It has nothing to do with what the trustee did; it has
6 everything to do with that appeal.

7 So at the end of the day, what we've had is tremendous
8 efforts made by many people here, obviously demonstrated by the
9 fee applications where lots and lots of lawyers are involved.
10 And I agree with that. But this is a one in a lifetime
11 enterprise that we're involved in here. You don't just show up
12 in court without doing all the hard work that's necessary to
13 figure out exactly what went on. Ms. Chaitman complains in
14 another motion which Your Honor will hear shortly that we don't
15 report enough, that people don't really know what's going on.

16 I have a very good recommendation, Ms. Chaitman: Read
17 the complaints. They tell a story. Every one of those
18 complaints tells an unbelievable story, an unbelievable story
19 of the fraud that was perpetrated by Mr. Madoff but not just as
20 a Jewish affinity fraud among his relatives and his friends,
21 which of course he did do and had no conscience about. But in
22 addition to that, he became part of the financial fabric of the
23 international financial community. I brought today to court a
24 chart. All right? This is a chart that's public record;
25 that's why it's there. It's been filed in the RICO action; we

1 filed it in the matter against Sonja Kohn. And what I'd like
2 to say -- and if I may just approach the chart, Your Honor?

3 Nobody gave us this chart. We had to do all the work
4 to find out where all that money went. And you start over
5 here, you start at Sonja Kohn and all of her colleagues and you
6 travel through all of the avenues all the banks, all the funds,
7 back and forth through BLMIS, Mr. Madoff, and back out again
8 and all the money out through Matachi, Austria and UNICRI
9 (sic). That's one case. That took an enormous amount of
10 effort to trace the billions of dollars that were flowing in
11 and out of BLMIS and those billions of dollars could only be
12 what? In a Ponzi scheme, they are customer property; they
13 cannot be anything else.

14 This is one chart. I could have presented, Your
15 Honor, thirty of these, all of them as complex as this one, all
16 of them involving an enormous array of activities by Mr. Madoff
17 over a period of decades. Unraveling that fraud, bringing it
18 to the attention of the courts, litigating those issues is
19 exactly where all that time, money and effort has been spent.
20 And I submit, with great results, as noted at the outset and
21 the money collected by the trustee.

22 Now, in addition to all of that litigation, we have
23 all of the other litigation. And the trustee gets criticized
24 for that, too, because that's the so-called good faith
25 litigation. Individuals who got other people's money,

1 basically the people that Mrs. (sic) Chaitman represents, those
2 are people -- and you know, it gets bantered about too
3 casually. Other people's money. You know, there's two classes
4 of victims, the losers and the winners which have become
5 defined by virtue of the trustee's method of calculating that
6 equity. But those winners and those losers actually share a
7 common bond. They both were victimized. They both were
8 defrauded. The only difference is, is that the net winners Ms.
9 Chaitman represents got their money back and then some. And
10 the people that the trustee is trying to help, the net losers,
11 never got their money back. Those 1,000 avoidance suits
12 represent 4.6 billion dollars.

13 Does the trustee walk from that? Does he say, you
14 know, those people got defrauded, it's not fair, we should just
15 forget it? Fine. That sounds good. What's the problem with
16 that? Well, the poor losers who didn't get the 4.6 billion
17 dollars back are never going to get it. It can't come from
18 anywhere, the statute doesn't provide for that. That's been
19 litigated over and over again by Ms. Chaitman. She loses it
20 every time. It's now in the circuit; that's where it should
21 be. And at the end of the day, I'm confident that Your Honor's
22 decision will be affirmed in that regard.

23 But more to the point, how do we just ignore that?
24 How do we tell all those people out there who are owed those
25 billions of dollars, "We wrote it off"? We can't do that. We

1 can't fulfill our obligations here and do that. So as a result
2 of all of that work, what we do have is lawsuits of 988, to be
3 precise, against good faith, 34 against bad faith. What do we
4 call bad faith? The Madoff family. All right? They're
5 definitely bad faith candidates; we've alleged that against
6 them. Your Honor's familiar with that. And numerous other
7 insiders and employees, adding up to thirty-four lawsuits.
8 Then we had the feeder funds, that's twenty-nine banks. And
9 then we have subsequent transferees that we've already started
10 filing lawsuits on, filed sixty since December 11th, began
11 subsequent transferees we've now discovered as we chase this
12 money.

13 I want to pause here for another comment made by Ms.
14 Chaitman about these lawsuits. Again, a misstatement and
15 gullibly absorbed by the news that somehow we've been found not
16 to have standing. Wrong. Not even close. What's happened is,
17 is that as Your Honor well knows there have been several --
18 more than one now, applications to withdraw the reference to
19 you with regard to the decisions on those issues. Judge Rakoff
20 and Judge McMahon decided there are federal issues there that
21 would be better determined by an Article III judge. In their
22 discretion, they made that decision. We disagree respectfully.
23 But we move on.

24 They didn't decide anything substantively. There are
25 two motions -- one motion, actually, pending by HSBC for

1 dismissal; we're replying to that next week. She could be
2 forecasting the outcome down the road, but it didn't happen
3 yet. And we're hopeful, very hopeful, that we will be able to
4 sustain those causes of action and try them here. As Judge
5 Rakoff said, whatever he decides is coming back here. And
6 my -- our hope, our sincere hope is all those causes of action
7 remain viable and that we do try them here.

8 So it's a misstatement. We didn't waste time. We
9 brought all this to the attention to the Court because it won't
10 be a waste of time in any event. We have significant avoidance
11 actions against all of those defendants in the billions of
12 dollars. That's why they come to the table and talk to us.
13 That's why we've achieved these settlements. Because we have
14 done this credibly. We don't walk into some of the biggest law
15 firms in the city and say give us the money. We give them a
16 detailed picture of the wrongdoing that their clients engaged
17 in from our perspective, based on hard facts, hard accounting
18 information and then in a very persuasive way, that we believe
19 in complaints to be decided by the Court.

20 As I said, nobody gave us that chart. Nobody gave us
21 any of this. We've put it all together.

22 One of the other items that keeps recurring in Ms.
23 Chaitman's papers is, is that if she loses a motion, she
24 reargues it here. We've heard about Levy again; that's on
25 appeal. We've heard about Picower; that's on appeal. That,

1 somehow, in her mind, is a basis for what? Not paying us our
2 compensation. Because she disagrees with us. Well,
3 respectfully, I disagree with her. The end of the day has
4 nothing to do with compensation. Lawyers win and lose cases
5 every day. We've been very fortunate. We've won quite a few.
6 We've lost some, too. But at the end of the day, it has little
7 or nothing to do with compensation. Ms. Chaitman is just using
8 this as another vehicle for complaint about the fact that she's
9 not getting her way, and her view of the law has been rejected,
10 uniformly by all courts in which she's thrust it in front of
11 them.

12 Two other points and then I think I'll turn it
13 over --- Mr. Bell is here, I see, from SIPC. But I don't
14 know -- is the trustee -- and the trustee's here.

15 Just two more points to sort of conclude this, Your
16 Honor, if I may. And I apologize for taking this much time.
17 The issue of Lehman Brothers, by analogy, I think fails on its
18 face. We're not talking about the biggest Ponzi scheme in the
19 world in Lehman Brothers. Lehman Brothers had all the stock
20 and all the cash. I'm very proud of Mr. Giddens; Mr. Giddens
21 has done a phenomenal job, and do you know what? He hasn't
22 taken on cent from SPIC because he didn't have to. That in
23 itself speaks volumes. Volumes about the fact that, yes, he
24 did distribute, you know, a phenomenal amount of money. But it
25 was there. So was the stock. That company failed because it

1 as part of a holding company that went bankrupt and when it
2 did, that brokerage house had to be liquidated. Not because
3 Robert (sic) Fuld or anybody else was taking any of the
4 money -- or Dick Fuld was taking any of that money. Nobody
5 was.

6 Maybe they made some bad investment choices and that's
7 true. And they were hit by a tsunami that was never even
8 anticipated by the financial community; that's also true. But
9 it wasn't one of the biggest sixty-five billion dollars Ponzi
10 schemes. And that explains the difference between the work
11 ethic and the work required in Madoff as opposed to Lehman.

12 Then, the last item that I'd like to bring up, Your
13 Honor, is that I'm very proud of the people that work on this
14 case. When they get demonized unjustly -- Mr. Picard in the
15 press is called "despicable". That's beyond the pale, not
16 acceptable. Litigate in a courthouse. Stick to the language
17 that's appropriate for lawyers. Don't get carried away. Best
18 example of this; Ms. Chaitman suggested that Mr. Picard's
19 getting fifty percent of all the money we bring in. I asked
20 Irving, "Why are you holding out?" It's ludicrous. Must know
21 nothing about the economics of law firms; a firm the size of
22 Baker, do you realize what the overhead is associated with
23 that? Just on its face is ludicrous. But it's even better
24 than that. So she gets called the other day by Law360. Law360
25 said what do you have for that? Do you have any documents?

1 No. She has no documents, nothing to support that. She
2 learned it, she said, by speaking to a friend of Mr. Picard's
3 in New Jersey. Wow. Wow. And you're willing, on the basis of
4 that, to come in and suggest that this trustee is taking that
5 kind of money and I am, too, I guess, so Baker's getting zero.
6 Right? This is ludicrous. This is beyond the pale. In
7 McCarthyesque fashion, she suggests, well, he didn't produce
8 his contract, it's un-Constitutional.

9 Your Honor, I think we've left reality here. I think
10 the reality is, is that this trustee and his counsel have
11 worked very, very hard and even without the statutory mandate
12 with regard to the payment and the fees in the absence of a
13 general estate, I respectfully submit that based on the work
14 and the achievements that we have in this case and the
15 submissions that we've made to Your Honor in connection with
16 therewith including this fee application, I respectfully submit
17 that Your Honor would approve this without the mandate from
18 SIPC.

19 Thank you, Your Honor.

20 MR. PICARD: Good morning, Your Honor. In this sixth
21 interim fee application, I'm seeking the payment of \$606,729.13
22 out of 713,799 dollars in time charges. Plus, the release of
23 \$113,304.32 of previously deferred fees and \$31.50 in
24 disbursements. I also request a reduction in the holdback from
25 fifteen percent to ten percent.

1 SIPC has filed its recommendations pursuant to Section
2 78eee(b) (5) (C) of SIPA in support. As the Court is aware, I've
3 discounted my hourly rate by ten percent. None of the payments
4 will be to me, my counsel or other administrative expenses come
5 out of the recoveries. And contrary to the argument of the
6 Peshkin objectors, I stand by my prior comments that SIPC does
7 not have a reasonable expectation of recouping its
8 administrative expenses at this time. It may happen in the
9 future, but we don't know that.

10 During the four-month period, as I mentioned, my
11 discounted fees would be 713,799 dollars. In addition to the
12 ten percent discount, I wrote off or did not bill approximately
13 139,000 dollars. As set forth in the application in Exhibit B,
14 a significant portion of my time was spent attending to
15 avoidance actions, claims review, case administration,
16 Bankruptcy Court litigation, dealing with matters with the U.S.
17 Attorney's office, the SEC and FINRA and the trustee's
18 investigation.

19 Your Honor, while I didn't hear all of what Mr.
20 Sheehan had to say, as you know and have commented in the past,
21 this proceeding involves a Ponzi scheme vast in scope and
22 geographical in reach. Many of our complaints allege and show
23 that. Nothing regarding customer claims nor the trustee's
24 investigation was dropped in our lap. It took hard work, as
25 that diagram will show. The fact that counsel disagreed with

1 our legal positions is not a basis to grant the objections,
2 especially when many of the matters are presently pending
3 litigation.

4 As with counsel's objection to the fifth interim
5 application, counsel for the objectors erroneously focuses on
6 the current allowed amount of customer claims, approximately
7 6.9 million dollars -- excuse me, billion dollars. As I
8 explained at the December 14th, 2010 interim fee hearing,
9 counsel conveniently ignores the 250 or so complaints with
10 Section 502(d) counts. If they are ultimately allowed or even
11 a portion is allowed, that would be at -- up to another at
12 least eleven billion dollars. While this is an issue more
13 properly dealt with in connection with the motion for
14 allocation of property and interim distribution, I feel
15 compelled to address it here today.

16 Counsel for the objectors, in effect, is asking Your
17 Honor to assume that no more than the current amount of allowed
18 customer claims will end up being the final amount. But, Your
19 Honor, you can just as easily assume that many of the claims
20 involved in litigation will be allowed. A number of
21 settlements for which we have filed applications for approval
22 include provisions allowing claims. And there are others being
23 negotiated as we speak and hopefully, we will be coming forward
24 with them in the near future. Accordingly, it still cannot be
25 reasonably said that SIPC will recoup its administrative

1 advances.

2 One other point I'd like to make is that when the
3 interim distribution is made, I cannot and I will not be put in
4 the position that counsel wishes of my making an over-
5 distribution so that at a later date we will have a problem and
6 might have to contact some of the distributees to recover back
7 money. That happened in an old act case called Lilinits (ph.).
8 It will not happen in the Madoff case. Further, the objection
9 is incorrect when it states that customer property amounts to
10 more than 9.8 billion dollars. I suspect that Mr. Sheehan has
11 gone through that math and I will not belabor that point.

12 Another objection I would like to comment on, as Mr.
13 Sheehan did late in his presentation, is the unfounded
14 allegation about my compensation and the assertion that I have
15 provided misleading information to the Court and to the public.
16 To the contrary, it is objectors' counsel who has been
17 spreading false information both in pleadings and press
18 releases. Counsel has been quoted in the press, as Mr. Sheehan
19 has indicated, there was nothing in the letter that she filed
20 yesterday that changes that. She is way off the mark. I don't
21 receive any percentage near thirty-five or fifty percent and I
22 certainly haven't received sixty to ninety million dollars
23 since the beginning of the case. Contrary to the allegation in
24 counsel's letter of yesterday, I am not a decision maker for
25 SIPC. And I am not a quasi-governmental agency or act in a

1 quasi-governmental capacity.

2 To try to end on a positive note, we have determined
3 all but four customer claims. And the remaining claims are the
4 subjects of settlement negotiations in connection with certain
5 pending litigation. Mr. Sheehan, I understand, has referred to
6 the recoveries on an average daily basis. I would submit to
7 Your Honor that in over 900 days of the case pending, that's
8 not too shabby.

9 Based on the record of these proceedings, I ask Your
10 Honor to award the requested amounts and the other requests
11 that I've made. I would be pleased to respond to any questions
12 that Your Honor may have.

13 THE COURT: I have none.

14 MR. PICARD: Thank you, Your Honor.

15 MR. BELL: Your Honor, Kevin Bell for the Securities
16 Investor Protection Corporation. When last we appeared on
17 December 14th, 2010 on the fifth application for interim fees
18 by trustee and counsel, we talked about hope and reasonable
19 expectation. Since that time, this Court has approved
20 settlements, recoveries by the trustee of over six billion
21 dollars. There is still a gap between my hope and lack of
22 reasonable expectation; my hope that customers will be fully
23 paid who have suffered injury by this malicious fraud, this
24 Ponzi scheme, and reasonable expectation that the Securities
25 Investor Protection Corporation will be paid back its advances

1 for administrative expenses. SIPC, of course, if the Court
2 approves these applications, advance the money to the trustee
3 to pay these allowed amounts of compensation as I have said in
4 all 903 days since the filing date, SIPC picks up the bill.
5 SIPC gets its funds from the securities industry, administers
6 its trust fund and not a penny of any compensation or
7 administrative expense has come out of any fund that the
8 trustee has gathered to satisfy the claims that have been
9 allowed by him.

10 In the hearing on December 14th at page 22 of the
11 transcript, I referred to the opponent's exhibit which was a
12 letter from the president of SIPC to then-Congressman Kanjorski
13 dated September 7th in which the president of SIPC estimated
14 that the total amount of allowed claims would be 17.3 billion
15 dollars. In the trustee's motion for allocation and
16 distribution to the victims here out of the fund of customer
17 property, the number that the trustee estimates will be
18 available for distribution mirabile dictu is 17.3 billion
19 dollars, not the 6.8 that our opponent harped on in the
20 December hearing nor in her latest opposition papers. There
21 are, as the trustee points out matters in his application,
22 matters that are in litigation and that are subject to Section
23 502(d) of the Bankruptcy Code in litigation with regard to
24 those allowed claims, one of which you will hear next week at
25 the hearing on the proposed settlement with Fairfield Sentry.

1 There will be another one in two weeks further out on the
2 settlement with Greenwich Sentry.

3 As you see, the window between hope and reasonable --
4 no reasonable expectation continues to narrow and, you know,
5 maybe one of these days on a fee application, I will stand up
6 and say, Your Honor, it will be the second criteria that you'll
7 be judging these fees on. I believe, you know, the extent of
8 fees in this case -- and I would note the Court to paragraphs
9 177, 178, 179 and 180 where the applicants say SIPC staff made
10 certain adjustments and suggestions which were adopted by the
11 trustee and B&H for each of the four months that are the
12 subject, October, November, December of 2010 and January of
13 2011, which are the subject of this application.

14 I can assure the Court that SIPC has pored over every
15 one of those pages, probably somewhere in the neighborhood of
16 six feet worth of documents and made comments and suggestions
17 as it sees fit and as it's charged by statute to do. And
18 that -- those adjustments and suggestions have been discussed
19 trustee and counsel. And when SIPC makes its recommendation,
20 it makes it in light of that overly intensive review of these
21 fees.

22 Another point I would note because you read in the
23 media -- and I don't know from whence it comes, of the
24 extraordinary dollars in this case. We've even had the SEC's
25 office and Inspector General comment on fee reviews. I've been

1 doing it for almost thirty-eight years and I guess I'm somewhat
2 expert at reading fee applications. It is among the most
3 enjoyable things that I do and it's why I went to law school.
4 You know, it's tedious; you need to have an understanding of
5 the full panorama of the case.

6 In Your Honor's commentary on my statements at the
7 December 14th hearing, you hit it right. This is a case like
8 none other. The opponents in this case are extremely -- or
9 represented by extremely highly skilled law firms. The
10 intensity with which it is litigated is of the highest order.
11 The staffing of the case is always a judgment that counsel has
12 to make when you are going up at what is reputed to be the best
13 among the best of New York's litigators. Because it's about a,
14 what I call a holy cause, which is to get the money back into
15 the fund of customer property so that the purpose of the
16 Securities Investor and Protection Act and the Congressional
17 intent is fulfilled and that is to make whole the victims.
18 Trustee is a long way along that road. If and when the Picower
19 settlement is final and those funds come into the trustee's
20 hands to distribution and if and when the Second Circuit
21 decides to affirm this Court's decision on that equity, forty-
22 four percent of the allowable claims, the 17.3 billion dollars
23 will be satisfied. That's getting close to, you know, only
24 another fifty-six percent more to go, Your Honor, until I stand
25 up here and say I -- there is a reasonable expectation.

1 But another point to note is that the public service
2 discount that SIPC suggests and counsel and trustee accept
3 before they're designated, in this case alone, through this
4 period, through January 31, is totaling twenty million dollars.
5 That's a healthy sum to leave on the table for any law firm
6 that's operating with its overhead. Some would like to see it
7 more. I can tell you in the adjustments and suggestions
8 adopted by the trustee the number may not reach that number but
9 it is high and may be considered painful by counsel when
10 they've made the adjustments but SIPC watches these fees.

11 In this -- in the opponent's letter that they filed
12 last night on page 2, I would like to address the trustee as
13 the decision maker for SIPC and I'd like to put it in context
14 of a decision that the Second Circuit made thirty-five years
15 ago in SEC v. Morgan Kennedy. In that case, the trustee,
16 Eugene Bondy, and the law firm of Rogers & Wells which
17 represented him took a position different than SIPC's and
18 bankruptcy judge Babitt, I think, ruled in favor of the trustee
19 and I think the trustee also was successful in persuading the
20 district court to agree with him. However, in the Second
21 Circuit, SIPC asserted its position and the Second Circuit
22 ruled with it.

23 SIPC always reserves the right as it does in -- by
24 statute to participate in all matters. And SIPC, in my view,
25 and I've been there almost thirty-eight years, is the ultimate

1 decision maker in this case as SIPC interprets the Securities
2 Investor Protection Act. The trustee is designated by SIPC and
3 appointed by the district court and the trustee is an
4 independent and makes his or her decision. But SIPC always
5 reserves the right to disagree.

6 I don't know whether we will ever be in such a
7 situation in this case, I hope not, but to -- I just wanted to
8 make the record clear that SIPC gets to be a decision maker in
9 its purview of the statute and its responsibilities and those
10 responsibilities not only talk about fees but talk about how
11 the statute's interpreted.

12 So, you know, with those points to the Court, I stand
13 by SIPC's recommendation in support of these fees and ask the
14 Court to enter an order approving these fees and I will assure
15 the Court that SIPC will work with the trustee and counsel when
16 we agree to move forward to try and make these victims whole in
17 this most perfidious of crimes. Thank you, Your Honor.

18 MS. CHAITMAN: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MS. CHAITMAN: The -- I take it that Mr. Picard has
21 conceded that he is compensated based upon a percentage
22 although not the percentage that I was told but, in any event,
23 a percentage of the fees that are paid to Baker & Hostetler. I
24 understood him to say that this morning. And I think that that
25 raises a very serious constitutional issue because clearly in

1 this case the trustee has made new law in terms of what SIPA
2 requires and permits.

3 THE COURT: I'd appreciate if you would get to the
4 question of the fees. If you're relating now to the letter
5 that you filed last night, then I'm going to tell you I'm going
6 to disregard that and I have a lot of comment to make about
7 that. That's a tactic I find somewhat abusive. Not even
8 calculated to get it before the Court. If it's intended as a
9 sound bite for the media, that is highly inappropriate.

10 I resent the fact that you filed a letter with the
11 Court at 4:30 in the evening of this hearing, didn't even get
12 it into the hands of the Court. What the tactic or the intent
13 of that letter is I do not know but the contents of that letter
14 are not appropriate for an objection to the fee request here.

15 MS. CHAITMAN: Well, Your Honor, there was no tactic
16 other than to --

17 THE COURT: The fact is it was not even brought to my
18 attention until just before I walked out here this morning.
19 And if it's a subject of any media conversation it's improper
20 with respect to this hearing today.

21 MS. CHAITMAN: Your Honor, it's --

22 THE COURT: It is not being regarded by this Court.

23 MS. CHAITMAN: Okay. We have made allegations which
24 are substantiated by personal knowledge with respect to
25 attorneys in my firm that Baker & Hostetler has grossly padded

1 time on matters in which we are directly adverse. We are not
2 in a position to attest to whether time was padded on matters
3 in which we are not involved because we have no way of knowing.
4 But on matters in which we have been directly adverse, Your
5 Honor, the -- where it would be reasonable to spend maybe 200
6 dollars, there were 6,900 dollars billed. It is so out of
7 whack with what could reasonably be considered compensable time
8 that it raises the issue whether that kind of overbilling
9 pervades the fees.

10 Now, the reason this is an important issue aside from
11 the fact that it goes to the integrity of the proceedings is
12 that SIPC, unless SIPC is prepared to say that it will not be
13 reimbursed for administrative expenses before the general
14 unsecured creditors are paid, in this case for the first time
15 in SIPC's history, the trustee has taken the position that
16 there are certain customers who don't have allowed customer
17 claims but will have allowed general unsecured claims. So,
18 that is a -- the great mass of the victims of Mr. Madoff are
19 going to be considered general unsecured creditors and unless
20 SIPC is prepared to say that it will not be reimbursed until
21 all the general unsecured creditors are paid in full, then any
22 overpayments to Baker & Hostetler come directly out of the
23 pockets of more than half of the victims of Mr. Madoff's crimes
24 and that's why this is such an important issue for us.

25 Now, with respect to the clawback actions against

1 innocent investors, Your Honor, we've laid out in our objection
2 that clearly under the statute, Mr. Picard does not have
3 standing to pursue those claims because he doesn't have the
4 right to utilize the avoidance provisions of the Bankruptcy
5 Code unless and until the allowed claims exceed the fund of
6 customer property.

7 Now, maybe someday that would be true but it's not
8 true today. Today he has enough money in the fund of customer
9 property to pay the allowed customer claims. Therefore, he
10 does not have standing, the statute is absolutely clear on
11 this, so, he has pursued a great deal of litigation against
12 innocent victims of Mr. Madoff's crimes and caused havoc among
13 5- or 6,000 people and their families without any statutory
14 authority. And that could have been dealt with in a different
15 way, in a way which would have cost the estate a great deal
16 less money in terms of professional fees and would have saved a
17 great deal of heartache among thousands and thousands of
18 innocent victims.

19 We will see what the decisions are of Judges McMahon
20 and Rakoff in the pending litigations there but they have both
21 issued preliminary decisions withdrawing the reference in whole
22 or in part in Judge McMahon's case with respect to JPMorgan
23 Chase in whole. In Judge Rakoff's case with respect to HSBC in
24 part, however, both judges indicated in preliminary decisions
25 that the trustee does not have standing under established law

1 to pursue aiding and abetting claims, to pursue claims pursuant
2 to the assignments to the extent that SPIC has paid some of the
3 claimants and to pursue claims that are barred under the in
4 pari delicto doctrine.

5 Now, for the trustee's law firm to be compensated tens
6 of millions of dollars for assertion of claims that the trustee
7 has no standing to bring is a waste of money. And, Your Honor,
8 if it's SIPC's money and SIPC's members want to pay for that,
9 that's fine but then SIPC should stand up and say that they are
10 prepared to waive any claim for reimbursement until all of the
11 general unsecured creditors are paid in full.

12 Now, we have alleged in our objection that the -- that
13 Baker & Hostetler has used temporary attorneys and not complied
14 with controlling law as to the disclosure of the terms of those
15 temporary attorneys' retention. There has been no disclosure
16 of the terms, the number of temporary attorneys, the amounts
17 that were actually paid for the agencies for those people's
18 time. There's been no disclosure of that and yet there are
19 scores of people whose time is billed at what appeared to be
20 regular Baker & Hostetler rates for people who are not on Baker
21 & Hostetler's website even four or five months after the time
22 period that's covered by this fee application.

23 In addition, the fee application charges for overhead
24 expenses that are not permissible. It doesn't go through how
25 you can justify taking away from a general unsecured creditor

1 money in order to pay for a librarian, an assistant librarian
2 and there's no disclosure of how far that goes. So, those are
3 the bases on which we do object, Your Honor. And again, if it
4 doesn't cost anything for the clients that I represent, the net
5 winners who are going to be general unsecured creditors in this
6 estate, then if SIPC wants to squander its money, that doesn't
7 hurt us. But if it comes out of our pocket, it does hurt us.
8 Thank you.

9 THE COURT: You want to be heard?

10 MR. SHEEHAN: None of what you just said is true.
11 Just not true. So, I don't understand how to respond to this.
12 Thousands and thousands and thousands? That -- 6,000 people?
13 These numbers have no relationship to reality. None. Zero.
14 And that's true of everything else she said. Doesn't have any
15 relationship to reality. We're squandering money? How do you
16 come up with these conclusory allegations?

17 Whether SIPC ever gets reimbursed in this case is so
18 far down the road we should be kissing each other if that
19 happens. It means we'll have collected over twenty billion
20 dollars that SIPC then shares. Your Honor will decide that
21 when that happens and so will the -- and the statute will be
22 dealt with then. But right now instead of saying we're
23 squandering money or wasting our time on standing, Helen
24 Chaitman ought to be standing behind me and cheering us,
25 cheering us to help those victims who don't get their money

1 back that she wants to take away from them.

2 That's really what's going on here. She wants that
3 money. She wants the money that's going to go to those
4 victims. Take it. That five billion dollars? There's only
5 one place that money came from. It came from people who didn't
6 get their money back. She wants it. Not to give it to them.
7 To take it away from them. This is pernicious what's going on
8 here. Has to stop.

9 MR. BELL: Your Honor, the way I read the statute,
10 78fff(d), it's very clear that sets the scheme for repayment of
11 SPICs for its administrative offense -- expenses. If and when
12 we reach that point in time where the trustee is being -- is
13 able to fully satisfy the -- all the allowed claims in this
14 case and when we look at another ten billion dollars are so;
15 and that's with a "b", ten billion, then we'll look at the
16 statute. But Congress clearly set forth what the statute is
17 and SIPC has no desire to engage in negotiation with Ms.
18 Chaitman in ignoring the clear words of the statute.

19 THE COURT: Thank you all. I'm here to determine
20 these applications based upon the filed papers and they are
21 somewhat voluminous. The objection that's been lodged here is
22 interesting in that there are, indeed, hundreds and hundreds of
23 very highly skilled law firms that are involved in this matter
24 on both sides of the equation of net winners, net losers, yet
25 there is only one objection that's been filed out of all of

1 those hundreds of skilled people knowledgeable in the field and
2 of the thousands of victims. It's somewhat clear to this Court
3 that the objection is rather partisan and parochial and is made
4 on behalf of an attorney and her clients who are not
5 particularly pleased with the determination on net equity as to
6 where the money goes to winners or losers.

7 I do agree that among the most important of the Madoff
8 victims are those who never got anything back or who are net
9 losers and somehow or other Ms. Chaitman doesn't feel necessary
10 to champion that particular group.

11 But notwithstanding all of that, the statute is very,
12 very clear as to the Court's role here in approving the
13 requested fees. And the statute is clear that unless there is
14 some reasonable expectation of recoupment, when SIPC recommends
15 that the amounts requested be approved the Court is required to
16 award the amounts recommended by SIPC. That's occasion to
17 hear. I do not at this point -- it would be very nice if
18 during our lifetimes we see the situation come about where
19 there is a likelihood of recoupment to SIPC. It means that
20 everybody else will have recovered what's appropriate for them.
21 I do not see that at this point in time nor am I speculating or
22 should speculate.

23 With respect to the kinds of services that have been
24 rendered here, the amounts requested, this is by any stretch of
25 the imagination one of the largest most complex sets of

1 litigation that have come down the pike. It's measured both in
2 quality and quantity in the thousands with deadlines that have
3 come upon everyone under the statute so that the December
4 deadline requiring thousands of new law suits to be filed is
5 something that was anticipated and it is a big stretch for any
6 law firm or any organization to deal with.

7 The chart that has been presented here as an
8 illustration of the enormous and complex activity involving
9 just one feeder fund with billions of dollars involved,
10 lawsuits all over the world and here is indeed forms a
11 predictor of the continuation of the kind of litigation that's
12 involved here. And for purposes of this hearing, I am
13 considering that charge as an exhibit, as a model of the kind
14 of activity in complex cases that are involved here in the
15 Madoff proceedings.

16 Many of the objections that are contained here have
17 been responded to both today orally and in the reply papers.
18 Most of the contents of the reply papers were not addressed by
19 Ms. Chaitman and the only thing that's come up is the one
20 single interesting kind of letter filed last night, not
21 necessarily calculated to get before the Court for review and
22 interpretation but nevertheless, purely speculating, making
23 general statements in a very improper fashion and also,
24 perhaps, even dealing with matters that are not yet coming
25 before the Court for purposes of today's objection.

1 The tactic of this kind of activity is not to be
2 countenanced. In my litigation days we called this
3 sandbagging; when you file a piece of paper which you know is
4 not able to be refuted whatever the contents are of that paper
5 and Courts generally disregard that kind of activity. To the
6 extent this becomes -- these filings become media events, they
7 are not considered by the Court in the context of the matter
8 that's before me.

9 The objection filed and all pertinent parts is a
10 repackaging of the prior interim fee objections. There is
11 nothing or any -- there is no argument that's set forth in the
12 objection that does provide any basis for the Court to deviate
13 from the statutory language that is determinative of this
14 application for fees. I overrule the objections in every
15 respect -- I'm sorry; that's objection, singular, in every
16 respect and grant the applications in full. Submit the
17 appropriate orders.

18 MR. SHEEHAN: I will Your Honor. I have it on disk.
19 I don't have the hard copy here with me, Judge. Can I just
20 leave you a disk? Thanks.

21 Your Honor, I think that concludes the calendar for
22 today.

23 THE COURT: Thank you.

24 MR. SHEEHAN: Thank you Your Honor.

25 THE COURT: Looking at a copy of the now infamous

1 letter, I see that it was also delivered to the court
2 downstairs and hand stamped sometime after 4 o'clock yesterday
3 afternoon.

4 MS. CHAITMAN: I apologize, Your Honor. We tried to
5 have it brought up to your chambers but they wouldn't let us
6 bring it up.

7 THE COURT: Nevertheless, you didn't get it there
8 until sometime way after 4 o'clock.

9 MS. CHAITMAN: You're right, Judge.

10 (Whereupon these proceedings were concluded at 11:10 AM)

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I N D E X

RULINGS

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Request to add/change language to the	12	11
litigation protective order granted		
Request of Dechert firm to add/change	12	11
language in the order granted		
Special counsels' fee applications granted	16	22
Applications for Windels, Marx, Lane &	18	1
Mittendorf, LLP granted		
Applications for Young, Conaway, Stargatt	18	1
& Taylor, LLP granted		
Trustee's fee applications granted	47	16

C E R T I F I C A T I O N

I, Sara Davis, certify that the foregoing transcript is a true
and accurate record of the proceedings.

SARA DAVIS

AAERT Certified Electronic Transcriber CET**D 567

Also transcribed by:

ELLEN KOLMAN

AAERT Certified Electronic Transcriber CET**D 568

Veritext

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Date: June 2, 2011